

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6127 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SWASTIK CO-OP. HSG. SOC. LTD. THRO' KHODIDAS J PADIYAR

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR AD MITHANI for Petitioner

MR ND GOHIL for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/12/96

C.A.V. JUDGEMENT

1. The petitioner, a Cooperative Housing Society Ltd. filed this writ petition before this court challenging thereunder the order of the respondent no.2 dated 29th December, 1984 under which 446 cement bags of the petitioner were ordered to be confiscated under the provisions of Essential Commodities Act, 1955. Further challenge has been made to the order of the respondent no.1 under which the order of respondent no.2 has been

confirmed in the appeal. The brief facts of this case are as under:

Upon making the inspection of the petitioner society situated near the Bus stand at Sayla on 29th October, 1982 in presence of Panchas by the Assistant Controller of the Civil Supplies Department, it was observed that construction has been carried out in an area of 108 sq.mts. against the approved construction plan for 79.53 sq. mts. and as in accordance with the new policy of the Government for the allotment of the levy cement by submitting false plan more cement has been obtained by the petitioner society. This was considered to be in violation of Gujarat Essential Commodities: (Licence, Control & Stock Declaration) Order 1981. Consequently, 446 bags of cement found on the site were ordered to be seized. A show-cause notice under sec.6(A) of Essential Commodities Act, 1955 has been given to the petitioner society by the respondent no.2. The petitioner society filed a reply to the show-cause notice. After considering the reply and evidence produced by the petitioner, the respondent no.2 under its order dated 29th December, 1983 ordered for the confiscation of 446 bags of levy cement. The petitioner society was given an opportunity to pay the sum of Rs.18196-80 being the value of the aforesaid cement bags and on payment thereof the cement bags were ordered to be delivered to it.

2. The petitioner filed an appeal against the said order before the respondent no.1 which came to be dismissed by the appellate authority under its order dated 31st December, 1984. Hence, this Special Civil Application.

3. Shri A.D. Mithani, learned counsel for the petitioner relying on the decision of the Supreme Court in the case of N. Nagendra Rao & Co. vs. State of Andhra Pradesh reported in 1995 (1) GLH 298 and decision of this court in the case of (M/s.) Arvind Kumar & Brothers vs. State of Gujarat reported in 1995 (1) GLH 833 contended that at the most it was a case of some irregularity committed by the petitioner and as such the confiscation of the entire bags of the petitioner society, is illegal.

4. On the other hand, the counsel for the respondents contended that it is a clear case of fraud committed by the petitioner, and petitioner has got more levy cement bags for the construction than actually for which it was otherwise entitled. In this case, both the authorities have considered it to be a case of committing

fraud and not merely irregularity, and as such, this court may not make interference in the orders made by the authorities below.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The plan which has been submitted earlier by the petitioner was for the construction of 108 sq. mts. and new plan submitted was for the construction of area of 79.53 sq. mts. which facts are not in dispute. On the basis of the evidence and the overall facts which have come on the record, it has been found by the respondent no.2 that the petitioner and its other members had with a purpose to obtain the cement and object of getting benefit under the statutory instructions dated 10-5-1983 issued, since they were not liable to get cement for construction area of more than 80 sq. mts. they furnished revised plan and estimates on 26th July, 1982 indicating total construction area of 79.53 sq. mts. and accordingly got the levy cement. On the site, the construction was found to be of 108 sq. mts.. These facts were found by both the authorities below against the petitioner. In view of this fact, both the authority have not committed any illegality in holding the petitioner though otherwise not entitled for the levy cement could have managed the levy cement from the Government by giving out the plans of the houses of area 79.80 sq. mts. i.e. less than 80 sq. mts. though actually the construction has been made in the area of 108 sq. mts.. It is clear case of practising fraud by the petitioner society for its own gains and benefits. The provisions of Gujarat Essential Articles (Licencing, Control & Stock Declaration) Order, 1981 has clearly been violated in the present case, and as such, the order made for confiscation of 446 bags of levy cement does not call for interference of this court. This court has extraordinary jurisdiction which has to be exercised in favour of, and to be extended to the law abiding citizen, and not to the persons, may be the Cooperative Society who has got the levy cement by practising fraud. The two decisions which have been relied upon by the counsel for the petitioner are of little help in this case. It is not a case of mere irregularity committed by the petitioner, but it is a case of clear fraud by the petitioner society for its own benefits. Under the Essential Commodities Act, 1955 no further revision in appeal has been provided from the order of the appellate authority, the respondent no.1. herein.

6. The Essential Commodities Act, 1955 (herein after referred to as the Act, 1955) is a specific legislation

governing the matter relating to the essential commodities for fair and equitable distribution of essential commodities to the public at large. Under the Act, 1955, the legislature has in its wisdom not provided second appeal or revision to this court. The object is to give finality to the decision of the appellate authority made in the matters under the Act, 1955. This court under Article 227 of Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decision. The powers of this Court under Article 227 of the Constitution may be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless this court interferes. The present case does not fall under the category aforesaid. No interference is called for in this case in the orders made by the authorities below.

7. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, granted by this court stands vacated. The petitioner is directed to pay Rs.1000/- by way of costs of this petition to the respondent. The respondent is directed to deposit this amount on receipt thereof in one of the funds maintained by the Hon'ble Chief Minister of the State for famine or other natural calamities.

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